

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT: Cynthia M. and Alan E. Provost
PO Box 1492
Renton, WA 98057

CONTACT: Gregory Ashley
Ashley Shoreline Design & Permitting
16412 NE 10th Place
Bellevue, WA 98008

LUA-09-006, ECF, SM, SMC

LOCATION: 3707 Lake Washington Boulevard North

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the installation of a pre-manufactured, freestanding, portable marine grade aluminum boatlift in association with an existing single-family residence.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on March 31, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the April 7, 2009 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, April 7, 2009, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

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| <u>Exhibit No. 1:</u> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request. | <u>Exhibit No. 2:</u> Vicinity Map |
| <u>Exhibit No. 3:</u> Site Plan | <u>Exhibit No. 4:</u> Pier and Boatlift Elevations |
| <u>Exhibit No. 5:</u> Zoning Map | <u>Exhibit No. 6:</u> City of Renton Determination of Non-Significance – Mitigated and Mitigation Measures |

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| Exhibit No. 7: Shoreline Substantial Development Permit | Exhibit No. 8: E-mail from Muckleshoot Indian Tribe requesting specific planting along the shoreline. |
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The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The property is located at 3707 Lake Washington Boulevard North. The proposed project is a 65-foot fully grated pier with an associated free-standing boatlift, which would be of marine grade aluminum. It is pre-manufactured, both the boatlift and the pier would be assembled and constructed on the water side of the property with the use of barge-mounted equipment. Eight 8-inch diameter piles would be driven by a drop hammer system located on the barge for the pier. The boatlift weighs approximately 500 pounds and would be set directly on the lake bottom on four footpads that are approximately 12" x 18" and would be operated by a hydraulic motor run by a 12 volt solar powered battery. No lights are projected for this facility. Currently there is no pier or boatlift on this property, there are similar facilities in the vicinity.

There is a concrete bulkhead along the shoreline and the lakebed consists of sand and gravel. Duration of construction is estimated at 10-15 days and would take place within the construction window established by the Department of Fish and Wildlife, July 16-December 31. The proposed project would not obstruct views from surrounding properties.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with one mitigation measure. No appeals were filed.

An email was received from the Muckleshoot Indian Tribe asking for placement of fish friendly gravel in front of the bulkhead and the planting of plants like bulrush etc.

Since boatlifts are not specifically identified in the Shoreline Master Program, they require a Hearing Examiner decision under the Shoreline Conditional Use. The boatlift is consistent with the five Shoreline Conditional Use Permit criteria. This use is compatible with other permitted uses along this portion of Lake Washington. This use will not interfere with the public use of public shorelines. The proposed use is for one watercraft to be maintained at this site. The design is compatible with the surroundings and the City's Master Program. The freestanding residential boatlift would be associated with an existing single family residence and would be located 13-feet from the southerly property line and 9 feet from the northerly property line. The use is in harmony with the general purpose and intent of the City's Master Program. The City of Renton piers and docks require a five foot side yard setback and cannot exceed 80 feet in length.

Gregory Ashley, Ashley Shoreline Design & Permitting, 16412 NE 10th Place, Bellevue, WA 98008 stated that the US Corps of Engineers, Fisheries and US Wildlife recommend that all boatlifts be placed in deeper than 9-foot of water, this project was designed in order to get the boatlift into just over nine feet of water.

In reference to the suggestion that spawning gravel be placed along the bulkhead as well as plant emergent vegetation, due to the depth of the water at the bulkhead which is three and a half feet over the high water mark, most emergent vegetation would not take hold and root in that location due to the wave and wind action that takes place on this site. Spawning gravel tends to move around quite vigorously so it would not stay in place.

The only fish that spawn on the beach are sockeye and that is not a sockeye spawning area, other fish will not come in to spawn along that section. Enough gravel could be brought in to make the water shallower, however, the gravel will not stay in place, it will wash away and be gone, some may come back but it would take a large structure to keep the gravel in place.

The hydraulic fluid used in these lifts is non-toxic and not detrimental to the environment.

The pier is fully grated to allow light to pass through the surface. This will help discourage predators from hanging out under the pier and allows salmon to hang out under the pier without the fear of predators.

Jerry Brennan, 3405 Lake Washington Blvd., Renton 98056 stated that he lives just south of the site and is in support of the residential docks in the area and believe this dock meets the criteria for the use.

Kayren Kittrick, Community and Economic Development stated that she has seen nothing on the documents showing that there is a sanitary sewer line that serves most of these homes. They must do a locate prior to installing any piles. It will be necessary to call before any digging is done in order to protect the sewer line.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:28 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicants, Cynthia M. and Alan E. Provost, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install a pier and boatlift in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 3707 Lake Washington Boulevard North. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of single family uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned R-8 (Single Family - 8 dwelling units/acre).
9. The subject site was annexed to the City with the adoption of Ordinance 1804 enacted in December 1959.

10. The subject site is approximately 4,549 square feet but a portion of the property extends out into the lake.
11. A single family home is located on the eastern, uplands portion of the site.
12. The applicant proposes erecting a new pier and boatlift. The pier is proposed to be 65 feet long and vary from 4 to 8 feet wide. The pier would have a surface area of approximately 315 square feet. It would have a grated deck that allow light to pass making it less likely to harbor salmon predators. The pier would be supported by eight 8-inch piles.
13. The boatlift would be approximately 10 feet square with a surface area of approximately 100 square feet. The boatlift would be freestanding and portable. It would be constructed of marine grade aluminum.
14. All construction would be accomplished from the lake by barge.
15. Code requires a five foot side yard setback from the property line. The pier and boatlift would be located approximately 13 feet from the south property line and approximately 9 feet from the north property line. Code permits docks to extend 80 feet into the lake and the applicant proposes a 65 foot long combination.
16. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake.
17. The hydraulic fluid that will help operate the boatlift is non-toxic and biodegradable so leaks would not create any environmental hazards.
18. The Muckleshoot tribe wants a gravel bottom to allow plants to be established in this area.
19. The applicant's representative noted that in this location, wind and water action would disrupt any bottom materials and hamper plant growth.
20. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
21. Staff noted that the residential designation of the subject site permits docks associated with single-family uses along this portion of the shoreline. Boatlifts are not a listed use nor are they a prohibited use and, therefore, are subject to a shoreline conditional use review.
22. A Metro sewer line is located in the lake bottom in the vicinity of the subject site. The applicant should take precautions and make sure the location of the line is known when they begin operation.

CONCLUSIONS:

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
 - i. The use must be compatible with other permitted uses within that area.
 - ii. The use will not interfere with the public use of public shorelines.
 - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
 - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
 - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area is zoned for and developed with single family uses. Many of the properties are served by docks and piers and some properties have boatlifts. The boatlift proposed by the applicant appears to be compatible with the uses located in this area.
3. The proposed boatlift should not interfere with any public use of the shoreline. Docks located both north and south of the proposed dock already extend out into the lake and therefore, an additional pier will not hamper near-shore navigation. This shoreline is privately owned and developed with a single-family home.
4. The lift will be setback from property lines more than required by code and will not create any untoward impacts on adjacent uses or on water-oriented uses.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. In this case, there should be no change other than some disturbance of the lake bottom during construction but this will occur at a time that limits interference with salmon. While it was suggested that materials such as gravel be placed along the lake bottom that might encourage plant growth, the location is apparently not suitable for this type of rehabilitation.
6. The lot, as noted, is private and it extends out into the lake. The proposed pier and boatlift serve the lot. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.
7. The pier and low-scale boatlift will not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for single-family uses and the normal complement of accessory uses. On a lakeshore property, piers, docks and similar uses including a boatlift are considered reasonable accessory uses.
8. The proposed boatlift should not create any significant adverse affects on the shoreline environment.

9. The pier and boatlift should not further harm the public interest.
10. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. A series of docks already protrude out into the lake from many of the homes. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much effect on the overall circumstances.
11. Since boatlifts are neither permitted nor prohibited outright, they do require review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
12. The applicant will need to ascertain the location of the Metro sewer line before beginning any operations in this area.

RECOMMENDATION:

The Conditional Use Permit and the Shoreline Substantial Development Permit for the pier and boatlift should be approved subject to the following condition:

1. The applicant shall ascertain the location of the Metro sewer line and take precautions to avoid any interference with the line or its functions.

ORDERED THIS 30th day of April 2009.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 30th day of April 2009 to the following:

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| Mayor Denis Law | Dave Pargas, Fire |
| Jay Covington, Chief Administrative Officer | Larry Meckling, Building Official |
| Julia Medzegian, Council Liaison | Planning Commission |
| Marty Wine, Assistant CAO | Transportation Division |
| Gregg Zimmerman, PBPW Administrator | Utilities Division |
| Alex Pietsch, Economic Development | Neil Watts, Development Services |
| Jennifer Henning, Development Services | Janet Conklin, Development Services |
| Stacy Tucker, Development Services | Renton Reporter |

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., May 14, 2009** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

Provost Pier and Boat lift
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An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., May 14, 2009.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.